

Law 337: Seminar on Trade and Investment in the PRC
UBC Law Faculty
Fall 2009
Professor Pitman B. Potter
Syllabus

Class Meets Every Thursday at 9:30am Room U 173.

Reading Materials:

Distribution Centre Materials (hereafter, “Materials”) (available for purchase, also on reserve).

Materials on Law Library Reserve

Day, Kristen A., ed. *China’s Environment and the Challenge of Sustainable Development* (Armonk NY: M.E. Sharpe, 2005).

“Special Issue: China’s Legal System: New Developments, New Challenges,” The China Quarterly No. 191 (September 2007).

Freshfields, Doing Business in China (looseleaf, hereafter, “Freshfields”), on reserve.

Mertha, Andrew, The Politics of Piracy: Intellectual Property in Contemporary China (Ithaca and London: Cornell University Press, 2005).

Stockholm Environment Institute and United Nations Development Programme, China Human Development Report 2002: Making Green Development a Choice (New York: Oxford University Press, 2002)

WTO Secretariat, “Trade Policy Review: China” (2008).

Zhang Xin, International Trade Regulation in China (Oxford and Portland: Hart Publishing 2006).

I. Introduction September 10, 2009

Stanley B. Lubman, “The Environment for Foreign Business in China: Two Decades of Progress, Continuing Uncertainties,” Freshfields Introduction.

Julia Ya Qin, “Trade, Investment and Beyond: The Impact of WTO Accession on the Chinese Legal System,” The China Quarterly no. 191 (Special Issue: September 2007), pp. 720-741.

Issues

- Prospects and challenges for foreign business in China.
- What kinds of foreign business are most appropriate and why?

II. **Contracts and Property** September 17, 2009.

Pitman B. Potter, “Contract Law,” (rev. 2008) Freshfields pp. I-7.2.1 -- I-7.2.49.

“Interpretation on Several Issues Concerning the Application of the ‘PRC Contract Law’” (2009), in Materials.

“China: News in Chinese Contract Law” (2009), in Materials.

“Contract Law Interpretation to Help Foreign Companies” (2009), in Materials.

“Property Rights Law of the PRC” (2007), in Materials.

“最高人民法院关于审理物业服务纠纷案件具体应用法律若干问题的解释” (Interpretation of the Supreme People’s Court on Certain Questions on the Specific Application of Law in Adjudication of Disputes on Property Matters) (2009), in Materials.

Issues

- Parties.
- Formation of contract and property relations (approvals).
- Performance.
- Remedies.
- WTO issues.

III. **China and the WTO** September 24, 2009.

Guest Presenter: Euan Taylor, head of Davis LLP's Patent Practice Group and an active member of the firm's [China & Southeast Asia Practice Group](#).

Donald C. Clarke, “China and the World Trade Organization,” Freshfields pp. I-11.1 -- I-1.30.

WTO, “Draft Protocol on the Accession of the People’s Republic of China” (2001), in Materials.

WTO Secretariat, “Trade Policy Review: China” (2008), Section I, Section II.

Issues

- Implications for legal and regulatory systems.
- Interpretation and enforcement of shared rules.
- Compliance standards.

IV. **Trade** October 1, 2009.

Jingzhou Tao, "General Introduction," Freshfields pp. II-18.1 – II-18.41.

Xin Zhang, International Trade Regulation in China (Oxford and Portland: Hart Publishing 2006), Parts I - II.

"Foreign Trade Law of the PRC" (1994, rev. 2004), in Materials.

Issues

- Trade regulation.
- MOFCOM and related institutions.
- Import and export licensing.
- GATT issues: subsidies, dumping, discrimination.
- WTO compliance issues.

V. **Introduction to Foreign Investment // Foreign Representative Offices** October 8, 2009.

NB: Paper topics to be finalized.

"Regulations on Foreign Investment Guidelines" (2002), in Materials.

"Guiding Catalogue of Industries for Foreign Investment" (2007), in Materials.

Sally Harpole, "Representative Offices," Freshfields pp. II.1.1 – II.1.27.

Issues

- Characteristics of investment (FDI, portfolio, etc.)
- Formation and business activities of foreign representative offices.
- Policy tensions between host and source countries.
- Regulatory perspectives: inducement and control
- Investment Guidance Policies.
- WTO issues.
- Foreign Representative Offices.

VI. Foreign Investment in Financial Services October 15, 2009.

**Guest Presenter: Martin Donner, Chair of the Asia Practice Group, Borden
Ladner Gervais LLP**

Philip Rapp, "FIE Holding Companies," Freshfields pp. II-4.1 – II-4.22.

Gao Peiji and Paul Kruger, "Asset Securitization," Freshfields pp. II.11.1-II.11.37.

James Walker and Mark Shipman, "PRC Mutual Funds," Freshfields pp. II-12.1 – II.12.91.

Andrew Godwin, "Foreign Banking in China," Freshfields pp. V-12.1 -- V-12.57.

Giovanni Ferri, "Banking in the People's Republic of China: Are New Tigers Supplanting Old Mammoths?" ADB Institute Discussion Paper No. 35 (Sept. 2005), in Materials.

"Law of the PRC on Commercial Banks" (1995, rev. 2003), in Materials.

"Regulations on Administration of Foreign-funded Financial Institutions" (2002), in Materials.

"Implementing Regulations for the Administration Regulations of the PRC on Foreign-funded Financial Institutions" (2004) in Materials.

Issues

- Holding Companies.
- Securities.
- Banking.
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VII. FIEs: Joint Ventures, Cooperative Enterprises, and WFOEs October 22, 2009.

Clark T. Randt, "Joint Ventures," in Freshfields pp. II-2.1 – II-2.34.

Randall Peerenboom, "Wholly Foreign-Owned Enterprises," Freshfields pp. II-3.1. – II.3.25.

"Company Law of the PRC" (1994, rev. 2005), in Materials.

"Law on Sino-Foreign Joint Equity Enterprises" (rev. 2001), in Materials.

"Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment" (2001), in Materials.

"Law on Sino-Foreign Cooperative Enterprises" (rev. 2000), in Materials.

“Detailed Implementing Rules on Sino Foreign Cooperative Enterprises,” (1995), in Materials.

"Wholly Foreign-Owned Enterprise Law" (rev. 2001), in Materials.

"Implementing Rules for China's Law on Wholly Foreign-Owned Enterprises" (rev. 2001), in Materials.

Issues

- Company Law.
- Establishment and operation of FIEs
- Management; oversight and control; accounting; regulatory requirements.
- WTO issues // TRIMs.

VIII. Technology Transfer and Intellectual Property Protection October 29, 2009.

NB: Paper preliminary outlines and bibliographies due.

David Ben Kay and Beth Bunnell, “Technology Transfer/Assistance,” Freshfields.

Volker Pasternak, “Introduction: China’s Intellectual Property Regime,” Freshfields pp. III-10.1.1 – III.10.1.28.

Andrew Mertha, The Politics of Piracy: Intellectual Property in Contemporary China (Ithaca and London: Cornell University Press, 2005) *passim*.

WTO Note on FDI and Technology Diffusion (2002), in Materials.

Administration of Technology Import and Export Regulations of the PRC (2001), in Materials.

Issues

- Form and context for technology transfer.
- Regulatory requirements.
- Intellectual property protection.

IX. Foreign Exchange November 5, 2009.

Tom Jones, “Foreign Exchange Control” in Freshfields.

"Rules of the PRC on Foreign Exchange Control" (1997), in Materials.

"Administrative Measures on Security Given to Foreign Parties by Domestic Institutions" (1996), in Materials.

"Detailed Rules for the Implementation of the Administrative Measures on Security Given to Foreign Parties by Domestic Institutions" (1997), in Materials.

"Circular of the State Administration of Foreign Exchange on Issuing the Regulations on Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions" (2009), in Materials.

"Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning the Management of Domestic Foreign Exchange Accounts of Overseas Institutions (2009), in Materials.

Issues

- Foreign exchange balancing.
- Forex guarantees.
- WTO issues.

X. Taxation November 12, 2009.

Sabina Stricker-Kellerer, "Taxation of Foreign Companies in China," Freshfields, pp. III-3.1.1 – III-3.1.37.

"PRC Enterprise Income Tax Law" (2008), in Materials.

"Implementing Regulations for PRC Enterprise Income Tax Law" (2008), in Materials.

"Agreement between the Government of Canada and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" (1986), in Materials.

"A New Tax Revolution" (2009), in Materials.

"Implementing Rules for the PRC Tentative Regulations on Business Tax (Revised)" (2009), in Materials.

Issues

- Taxation of foreign business enterprises.
- Other taxes.
- Tax treaties.
- WTO issues.

XI. Sustainable Development November 19, 2009.

"Labor Contract Law of the People's Republic of China" (2007), in Materials.

"Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes" (2007), in Materials.

Day, Kristen A., ed. China's Environment and the Challenge of Sustainable Development (Armonk NY: M.E. Sharpe, 2005), on Reserve.

International Law Association, "New Delhi Declaration of Principles of International Law Relating to Sustainable Development" (Resolution 3/2002 adopted at the 70th Conference of the International Law Association, April 2-6, 2002), in Materials.

Sampson, Gary R., The WTO and Sustainable Development (Tokyo: UN University Press, 2005), on Reserve.

Stockholm Environment Institute and United Nations Development Programme, China Human Development Report 2002: Making Green Development a Choice (New York: Oxford University Press, 2002), on Reserve.

Xu Zhongmin, Guodong Chen, Dongjin Chen, Paul H. Templet, "Economic diversity, developmental capacity and sustainable development in China," Ecological Economics vol. 40 (2002), pp. 369-378, in Materials.

Issues

- Environment
- Corporate Social Responsibility

XII. Dispute Resolution November 26, 2009.

"Civil Procedure Law of the PRC" (rev. 2007), in Materials.

Eu Jin Chua and Katherine Sanger, "Arbitration in the PRC," China Law & Practice vol. 19 no. 4 (May. 2005), pp. 19-21.

"Arbitration Law of the PRC" (1995), in Materials.

"China International Economic and Trade Arbitration Commission Arbitration Rules" (2005), in Materials.

Randall Peerenboom, "Enforcement of Arbitral Awards," Freshfields pp. IV-5.1 – IV.5.78.

Selected Cases (Handout).

Issues

- Forms of dispute resolution.
- Enforcement of judgments and arbitral awards.
- WTO issues.

XIII. Summary Session December 3, 2009.

NB: Papers Due.